

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:16-CV-196-F

CITIFINANCIAL SERVICINGS, LLC,)
)
Plaintiff,)
)
vs.)
)
DORMAN S. POYTHRESS, SHARON A.)
KEYES, as Personal Representative of the)
Estate of Edith Mary Aliberti, CARTERET)
URGENT & FAMILY CARE CENTER)
and UNITED STATES OF AMERICA, by)
and through its agency the Internal Revenue)
Service,)
)
Defendants.)
_____)

ORDER

Before the court is Plaintiff's Application to Court for Entry of Default Judgment as to Defendants Dorman S. Poythress, Sharon A. Keyes, and Carteret Urgentcare Center, P.A. ("Application") [DE 10]. The court construes the Application as a motion for entry of default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

I. BACKGROUND

Plaintiff initiated this action by filing a complaint in Craven County Superior Court, naming as defendants Dorman S. Poythress, Sharon Keyes, as personal representative of the Estate of Edith Mary Aliberti, Carteret Urgent & Family Care Center, and the United States of America, by and through its agency the Internal Revenue Service. In the complaint, Plaintiff seeks, *inter alia*: (1) an order and judgment to reform the legal description in the a deed of trust; (2) a judgment declaring Poythress owns the property subject to Plaintiff's deed of trust; (3) a judgment that Aliberti's lien has been satisfied/canceled of record; and (4) a judgment that the

liens of the United States of America and Carteret Urgent & Family Care Center are subordinate to Plaintiff's deed of trust. *See* Compl. [DE 1-2]. The United States filed a Notice of Removal [DE 1] in this court on July 11, 2016 pursuant to 28 U.S.C. §§ 1442(a) and 1444, and after receiving an extension of time, timely filed its answer [DE 8] on August 9, 2016. To date, Poythress, Keyes and Carteret Urgent & Family Care Center have not entered an appearance in this matter.

II. DISCUSSION

Attached to Plaintiff's Application is an affidavit of service advising of the purported service on Poythress, Keyes and Carteret Urgent & Family Care Center. [DE 9]. Upon review, the court finds Plaintiff effected proper service on Poythress and Keyes in accordance with N.C. Gen. Stat. § 1A-1, Rule 4(1)(d) and filed proof of that process in accordance with N.C. Gen. Stat. § 1-75.10(a). *See* Deborah Hatcher Aff. Serv. ("Hatcher Aff.") ¶¶ 3-6 & Exs. 1-2 [DE-9]; *see also* *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350 (1999) (explaining proper service of process is necessary for the court to exercise personal jurisdiction over a defendant). As both Poythress and Keyes failed to appear, "plead or otherwise defend," default shall be entered as to these defendants. FED. R. CIV. P. 55(a).

The court finds, however, that Plaintiff has not effected proper service on Carteret Urgent & Family Care Center due to the discrepancy between defendant's name listed on the complaint and in the affidavit of service. *Cf.* Compl. (identifying defendant as "Carteret Urgent & Family Care Center") with Hatcher Aff. (identifying defendant as "Carteret Urgentcare Center, P.A."). Although service of process is not defective "simply because the complaint misnames the defendant in some insignificant way," *Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 224 (4th Cir. 1999), the discrepancy between the names in the complaint and the affidavit of

service does not amount to a mere misnomer. *Cf. id.* (holding that service of process was valid where plaintiff failed to include the abbreviation "Inc." after a defendant's name).

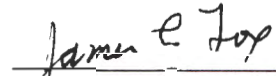
III. CONCLUSION

For the foregoing reasons, it is ORDERED as follows:

- (1) Plaintiff's Application [DE 10] is ALLOWED IN PART and DENIED IN PART;
- (2) Default is entered as to Dorman S. Poythress and Sharon A. Keyes only; and
- (3) Plaintiff shall file a motion for leave to file an amended complaint with the correct name of Carteret Urgent & Family Care Center, along with a proposed summons, **no later than March 9, 2017.**

SO ORDERED.

This the 23rd day of February, 2017.



JAMES C. FOX
Senior United States District Judge